

MAY 10 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WESLEY WALTERS,

Plaintiff-cross-claimant -
Appellant,

v.

ICICLE SEAFOODS, INC.,

Defendant-cross-defendant -
Appellee,

ARCTIC STAR P/V, O/N 501203;
DISCOVERY STAR INC; DISCOVERY
STAR F/V; OCEAN PHOENIX, O/N
296779,

Defendants - Appellees,

PHOENIX PROCESSOR LIMITED
PARTNERSHIP INC,

Defendant-counter-claimant -
Appellee.

No. 05-35334

D.C. No. CV-03-00545-JLR

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

James L. Robart, District Judge, Presiding

Submitted May 3, 2006**
Seattle, Washington

Before: REINHARDT, McKEOWN, and CLIFTON, Circuit Judges.

Wesley Walters appeals the dismissal of his case under Federal Rule of Civil Procedure 37(b)(2)(C). The district court held that after Walters's repeated failure to appear for his deposition and his violation of the court's January 7, 2005, order (1) the defendants were prejudiced in their ability to respond to Walters's claims and prepare for the upcoming trial, (2) less severe sanctions were not appropriate given that the court had already stayed proceedings after Walters failed multiple times to appear for his deposition, (3) monetary sanctions were inappropriate because of Walters's repeated statements to the court regarding his dire financial straits, and (4) Walters's failure to comply with the court's order was willful and in bad faith.

Rule 37 permits the district court, in its discretion, to dismiss the case of a party who fails to comply with an order compelling discovery. "We reverse a district court's decision to impose discovery sanctions under Rule 37 only if we have a definite and firm conviction that the court committed a clear error of

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

judgment in the conclusion it reached upon a weighing of the relevant factors.”

Computer Task Group, Inc. v. Brothby, 364 F.3d 1112, 1115 (9th Cir. 2004)

(quotation marks omitted). “However, where the drastic sanctions of dismissal or

default are imposed, the range of discretion is narrowed and the losing party’s

noncompliance must be due to willfulness, fault, or bad faith.” *Id.* (quotation

marks and alterations omitted). The district court properly identified and

considered the five factors for deciding whether to dismiss under Rule 37. *See id.*

The district court also determined that Walters acted willfully and in bad faith. We

hold that in these circumstances, the district court did not abuse its discretion in

dismissing Walters’s case.

Walters also appeals the district court’s entry of default judgment as a matter

of law against him in favor of Phoenix Processor Limited Partnership (PPLP) for

reimbursement of maintenance and cure benefits. The court properly entered

default judgment against Walters because the law of the case established that

Walters was not entitled to such benefits while employed at PPLP. *See Ingle v.*

Circuit City, 408 F.3d 592, 594 (9th Cir. 2005).

AFFIRMED.

